

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

UNITED STATES OF AMERICA,
For the use and benefit of Tetra Tech Tesoro, Inc.,

Use Plaintiff.

CIVIL ACTION
NO.:

v.

COMPLAINT
JURY TRIAL DEMANDED

SAFECO INSURANCE COMPANY OF AMERICA,

Defendant.

COMPLAINT

Use Plaintiff United States of America, for the use and benefit of Tetra Tech Tesoro, Inc. (“Tesoro”), for its complaint against Defendant Safeco Insurance Company of America (“Safeco”) states as follows:

PARTIES, JURISDICTION AND VENUE

1. Tesoro is a Virginia corporation with its principal office located in Virginia Beach, Virginia.

2. Safeco is a for-profit New Hampshire corporation with its principal office located at 175 Berkeley Street, Boston, Massachusetts 02116. Safeco can be served with process via its registered agent, Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092.

3. At all times pertinent to this action, Safeco was doing business in Georgia as a compensated surety, including specifically within the jurisdiction of this Court.

4. This Court has personal jurisdiction over Safeco and also has subject matter jurisdiction respecting this action pursuant to 28 U.S.C. § 1345 and the provisions of the Miller Act, 40 U.S.C. § 3131, *et seq.* This Court has pendant jurisdiction and supplemental jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1367.

5. Without limitation, this action arises under the Federal Miller Act, 40 U.S.C. § 3131, *et seq.* and venue lies with this Court pursuant to 40 U.S.C. § 3133 of the Miller Act; which code provision further entitles Tesoro to bring this action in the name of the United States for Tesoro's use and benefit.

6. All conditions precedent, if any, to both the filing and maintenance of this action have occurred, been satisfied, been met or been waived.

**THE WHITELAW WEDGE ADDITION PROJECT,
PAYMENT BOND, AND SUBCONTRACT**

7. The United States of America, through the Department of the Army, contracted certain construction work to JAAAT Technical Services, LLC ("JAAAT") regarding a federal government construction project referred to as W912HN-10-D-0063/0003 ("Contract"), involving the construction of an addition commonly referred to as Whitelaw Wedge Addition at Ft. Gordon, Georgia ("Project").

8. Pursuant to the requirements of the Project's contract between JAAAT and the Government, and also the Miller Act, JAAAT, as principal, and Safeco, as surety, posted a payment bond for the benefit of claimants such as Tesoro who furnished labor, materials or

equipment for the Project; understood by Tesoro as having been designated as Safeco Bond No. 024046316 (“Payment Bond”).

**SAFECO’S LIABILITY TO TESORO AS PROPER PAYMENT BOND CLAIMANT
UNDER THE MILLER ACT AND THE PROJECT’S PAYMENT BOND**

9. Tesoro is a proper payment bond claimant under the Payment Bond and the Miller Act. Without limitation, JAAAT subsequently subcontracted portions of the Contract work for the Project to Tesoro (“Subcontract”), and Tesoro furnished labor and materials for the Project for which it remains owned, and Safeco benefited (“Project Work”).

10. JAAAT did not pay Tesoro in full for Tesoro’s Project Work, including Project Work for which JAAAT was paid by the Government and either paid late to Tesoro or never paid Tesoro at all.

11. Tesoro is a proper claimant under the Payment Bond and the Miller Act, has right to bring this action pursuant to the Payment Bond and the Miller Act, and has right to recovery as sought herein under the Payment Bond and the Miller Act.

12. Pursuant to the Payment Bond and the Miller Act, Safeco is liable to Tesoro for all unpaid Project Work furnished or provided by Tesoro, for Tesoro’s other project related losses, costs, damages, and expenses due under the Subcontract, including attorney, expert and litigation fees, and for interest due on all monies due to Tesoro.

13. All conditions precedent to such recovery have occurred, been met, been satisfied or been waived, including without limitation, in that more than 90 days, but less than one year, has expired since the date Tesoro last furnished work or materials.

SAFECO'S LIABILITY TO TESORO FOR ATTORNEYS' FEES

AND EXPENSES OF LITIGATION PURSUANT TO O.C.G.A. § 10-7-30

14. Safeco has no reasonable basis for denying Tesoro's claims, and said denial constitutes bad faith.

15. Pursuant to O.C.G.A. § 10-7-30, Safeco is liable to Tesoro for the full amount of the loss occasioned by Safeco's bad faith denial of Tesoro's claims, plus twenty five percent (25%) of the amount of said loss, plus all reasonable attorneys' fees incurred by Tesoro in the prosecution of this civil action.

SAFECO'S LIABILITY TO TESORO FOR ATTORNEYS' FEES

AND EXPENSES OF LITIGATION PURSUANT TO O.C.G.A. § 13-6-11

16. In failing and refusing to make payment to Tesoro, Safeco has acted in bad faith, has been stubbornly litigious, and has caused Tesoro unnecessary trouble and expense, entitling Tesoro to recover its expenses of litigation, including attorneys' fees incurred in prosecuting this civil action pursuant to O.C.G.A. § 13-6-11.

RELIEF SOUGHT

WHEREFORE, Tesoro, by counsel, prays that judgment be entered in its favor against Safeco, and that it be awarded judgment against Safeco, without limitation, for: a) all unpaid Project Work furnished or provided by Tesoro in such amount as proven at trial; b) for Tesoro's other project related losses, costs, damages, and expenses due under the Subcontract in such amount and manner as proven at trial, including attorney, expert and litigation fees; c) for pre- and post-judgment interest on all amounts awarded; d) for Tesoro's court costs; and e) for such other and further relief as deemed appropriate to the Court.

JURY TRIAL DEMAND

Use Plaintiff Tesoro demands trial by jury.

Done this date: December 8, 2015

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

/s// Richard H. Hill, II

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